

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 786 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

MAGANBHAI JEERALBHAI BHIL

Versus

DY SECRETARY AGRI & COOP DEPARTMENT

Appearance:

MR KM PARIKH for Petitioners

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 11/02/2000

ORAL JUDGEMENT

The petitioners challenge the order made under
Section 155 of the Gujarat Co-operative Societies Act,
1961 on 31.1.2000 setting aside the order of the District
Registrar dated 29.12.1998 passed under Section 81 of the
Act superseding the management Committee. It is
contended that the revisional authority had set aside the

order of the District Registrar without there being any valid reason. It is argued that there is a reference to the show cause notice which was issued by the District Registrar in the order itself and therefore it cannot be said that the order was made without hearing the management Committee. It is also argued that the President had taken over the record of the society and if it remains with him the amounts are likely to misappropriated and that the interest of the Tribals would suffer. It is also argued that the order under Section 81 of the Act is a reasoned order and there were adequate grounds for superseding the Committee.

Under Section 81 of the said Act if the Registrar is of the opinion that the Committee persistently makes default or is negligent in the performance of the duties imposed on it by the Act or the rules or the bye-laws or does anything which is prejudicial to the interest of the society or members or fails to comply with any directions issued under sub-section (1) of Section 160 or such directions as modified under sub-section (2) of that Section, then subject to the rules, the State Government or as the case may be the Registrar may, after giving the committee an opportunity of stating its objections, if any, within fifteen days from the date of issue of notice, by order in writing, remove the Committee and appoint a committee consisting of one or more members of the society, in its place or one or more administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding two years as may be specified in the order, which period may, at the discretion of the Registrar, be extended from time to time, so that the total period does not exceed four years in the aggregate.

It will thus be seen that an order under Section 81 of the said Act superseding the Committee can be made only after giving an opportunity to the Committee of stating its objections. It has been found by the revisional authority that the Committee was denied such opportunity by the District Registrar. The District Registrar had issued a show cause notice fixing 7.11.1998 as the date for hearing which was to take place at 1.00 p.m. On that day, however, since the members of the Committee were delayed in their travel, they reached at 1.15 p.m. but at that time the District Registrar was not present in the office and the matter was adjourned to 10.11.1998. On that day the President of the Society had fallen sick and a medical report was sent seeking adjournment. That report had reached the office but without taking that into consideration the order was made

superseding the Committee and appointing the administrator. The revisional authority found that this was against the principles of natural justice and that no such order could have been made without hearing the Committee in the matter. It is observed that the order was hurriedly made without giving adequate opportunity to the Committee of stating its objections against the proposed action. As regards the dismissal of the appeal by the Joint Registrar for default in appearance it has been observed that the date of hearing was not intimated to the advocate who appeared at the relevant time. The revisional order is therefore in consonance with the requirement of Section 81 of the Act and has been lawfully made in exercise of powers conferred under Section 155 of the said Act warranting no interference by this court. The petition is therefore summarily rejected. It is obvious that since the order of the District Registrar has been set aside on the ground that hearing was not given as contemplated by Section 81 of the said Act, it will always be open to the District Registrar to exercise his powers under Section 81 of the said Act by following the provisions regarding giving an opportunity of hearing to the Committee as contemplated therein.

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